

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

In The Matter of:)
) OAH No. 10-0222-CSS
A. M. K.) CSSD No. 001038022
_____)

DECISION AND ORDER

I. Introduction

The custodian, M. J. N., appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in Mr. K.'s case on March 26, 2010. The obligee children are O., 19; and S., 17.

The formal hearing was held on May 17, 2010. Neither Ms. N. nor Mr. K. participated.¹ Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded; the record closed on May 27, 2010.

Based on the record and after due deliberation, CSSD's Modified Administrative Child Support and Medical Support Order is vacated. Mr. K.'s child support remains at \$522 per month for two children and \$387 per month for one child, as ordered on May 27, 2004.

II. Facts

Mr. K.'s child support obligation for O. and S. was set at \$522 per month for two children and \$387 per month for one child on May 27, 2004.² On May 19, 2009, Mr. K. requested a modification review.³ On May 28, 2009, CSSD issued a Notice of Petition for Modification of Administrative Support Order and requested income information.⁴ On March 26, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. K.'s child support down to \$50 per month, effective June 1, 2009, because he was incarcerated.⁵ Ms. N. filed an appeal on April 19, 2010, alleging that Mr. K. works as a fisherman under the table for relatives and requesting that his child support obligation not be reduced.⁶

¹ Ms. N. did not appear for the hearing so telephone calls were placed to her two contact numbers but there was no answer at either number. There also was no answer at Mr. K.'s contact number.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 3.

⁵ Exh. 4 at pg. 6.

III. Discussion

Ms. N. filed an appeal and requested a formal hearing, but she failed to participate in the hearing and she did not present testimony or provide any documents subsequent to filing his appeal. Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a child support decision if the requesting party fails to appear.

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”⁷ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes “material change in circumstances” has been established and the order may be modified. A modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.⁸

If the person who requests a modification review does not provide evidence sufficient to review the underlying child support order, CSSD may decline the review.⁹ The person requesting the hearing, in this case, Ms. N., has the burden of proving that CSSD’s Modified Administrative Child Support and Medical Support Order was incorrect.¹⁰

CSSD indicated at the hearing that Mr. K.’s child support was modified to \$50 per month on the agency’s information at the time that Mr. K. was incarcerated. However, while reviewing this case for the hearing, CSSD discovered that Mr. K. was incarcerated from October 2, 2009, through October 14, 2009, a period of only 12 days. On that basis, and also because he did not provide any income information, CSSD requested that the modification order be vacated.

CSSD’s request to vacate the modification should be granted. The agency would have been acting within its regulations had it denied the obligor’s request for a modification review because he did not document his income. But since the information available at the time indicated Mr. K. was in jail, CSSD modified his order to \$50 per month, as is common practice for an incarcerated obligor. However, CSSD has since learned that Mr. K. was in jail for only 12 days. That is not a long enough period of time to entitle him to a minimum order under Civil Rule 90.3. His support obligation is thus reviewable based on his income, but since Mr. K. did not provide any income information, his petition for modification

⁶ Exh. 5.
⁷ AS 25.27.190(e).
⁸ 15 AAC 125.321(d).
⁹ *Id.*
¹⁰ 15 AAC 05.030(h).

review should be denied and the Modified Administrative Child Support and Medical Support Order dated March 26, 2010, should be vacated. Mr. K. may request another modification, but CSSD does not have to review his child support order if he does not provide sufficient income information.

IV. Conclusion

Ms. N. did not participate, but CSSD presented evidence indicating that Mr. K.'s child support should not be modified at this time because he was incarcerated for only a short time and he also did not document his income. Thus, CSSD's Modified Administrative Child Support and Medical Support Order was incorrect and should be vacated.

V. Child Support Order

- CSSD's March 26, 2010, Modified Administrative Child Support and Medical Support Order is vacated;
- Mr. K.'s child support remains at \$522 per month for two children and \$387 per month for one child;
- All other provisions of the prior order in Mr. K.'s case, the Modified Administrative Child Support and Medical Support Order issued on May 27, 2004, remain in full force and effect.

DATED this 16th day of June, 2010.

By: Signed _____
Kay L. Howard
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notice, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 6th day of July, 2010.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

[This document has been modified to conform to technical standards for publication.]